

1 HOUSE BILL NO. 19

2 INTRODUCED BY W. MCNUTT

3 BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING STATE LAND ADMINISTRATION
6 TO CLARIFY THAT LAND GRANTED PURSUANT TO THE MORRILL ACT IS NOT SUBJECT TO
7 DEDUCTIONS OF INTEREST OR INCOME FOR PURPOSES OF FUNDING THE ADMINISTRATION OF
8 MORRILL ACT LAND OR FUNDS DERIVED FROM MORRILL ACT LAND; PROVIDING A STATUTORY
9 APPROPRIATION FOR THE ADMINISTRATION OF MORRILL ACT LAND; PROVIDING FOR THE
10 CARRYOVER OF THE UNEXPENDED PORTION OF THE STATUTORY APPROPRIATION; PROVIDING FOR
11 REIMBURSEMENT FROM THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO THE
12 MORRILL ACT TRUST FOR THE ADMINISTRATIVE COSTS OF INVESTING THE MORRILL ACT FUNDS;
13 AMENDING SECTIONS 17-1-508, 17-6-201, 17-7-502, 77-1-108, 77-1-109, 77-1-602, 77-1-606, 77-1-613,
14 77-1-905, 77-2-328, AND 77-5-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17

18 **SECTION 1. SECTION 17-1-508, MCA, IS AMENDED TO READ:**

19 **"17-1-508. Review of statutory appropriations.** (1) Each biennium, the office of budget and program
20 planning shall, in development of the executive budget, review and identify instances in which statutory
21 appropriations in current law do not appear consistent with the guidelines set forth in subsection (2).

22 (2) The review of statutory appropriations must determine whether a statutory appropriation meets the
23 requirements of 17-7-502. ~~A~~ Except as provided in 77-1-108, a statutory appropriation from a continuing and
24 reliable source of revenue may not be used to fund administrative costs. In reviewing and establishing statutory
25 appropriations, the legislature shall consider the following guidelines. A statutory appropriation may be considered
26 appropriate if:

27 (a) the fund or use requires an appropriation;

28 (b) the money is not from a continuing, reliable, and estimable source;

29 (c) the use of the appropriation or the expenditure occurrence is not predictable and reliable;

30 (d) the authority does not exist elsewhere;

- 1 (e) an alternative appropriation method is not available, practical, or effective;
- 2 (f) other than for emergency purposes, it does not appropriate money from the state general fund;
- 3 (g) the money is dedicated for a specific use;
- 4 (h) the legislature wishes the activity to be funded on a continual basis; and
- 5 (i) when feasible, an expenditure cap and sunset date are included.

6 (3) The office of budget and program planning shall prepare a fiscal note for each piece of legislation
7 that proposes to create or amend a statutory appropriation. It shall, consistent with the guidelines in this section,
8 review each of these pieces of legislation. Its findings concerning the statutory appropriation must be contained
9 in the fiscal note accompanying that legislation."

10

11 **Section 2.** Section 17-6-201, MCA, is amended to read:

12 **"17-6-201. Unified investment program -- general provisions.** (1) The unified investment program
13 directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be
14 administered by the board of investments in accordance with the prudent expert principle, which requires an
15 investment manager to:

16 (a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then
17 prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters
18 exercises in the conduct of an enterprise of a like character with like aims;

19 (b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss
20 and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

21 (c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified
22 investment program.

23 (2) (a) Retirement funds may be invested in common stocks of any corporation.

24 (b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital
25 stock" means only the common stock of a corporation.

26 (3) (a) This section does not prevent investment in any business activity in Montana, including activities
27 that continue existing jobs or create new jobs in Montana.

28 (b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in
29 venture capital companies. Whenever possible, preference should be given to investments in those venture
30 capital companies that demonstrate an interest in making investments in Montana.

1 (c) In discharging its duties, the board shall consider the preservation of purchasing power of capital
2 during periods of high monetary inflation.

3 (d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion
4 of a loan originated by a financial institution is not considered a direct loan.

5 (4) The board has the primary authority to invest state funds. Another agency may not invest state funds
6 unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the
7 laws and constitution of this state. The board has the power to veto investments made under its general
8 supervision.

9 (5) The board shall:

10 (a) assist agencies with public money to determine if, when, and how much surplus cash is available for
11 investment;

12 (b) determine the amount of surplus treasury cash to be invested;

13 (c) determine the type of investment to be made;

14 (d) prepare the claim to pay for the investment; and

15 (e) keep an account of the total of each investment fund and of all the investments belonging to the fund
16 and a record of the participation of each treasury fund account in each investment fund.

17 (6) The board may:

18 (a) execute deeds of conveyance transferring real property obtained through investments. Prior to the
19 transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a
20 qualified appraiser.

21 (b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and
22 17-6-105;

23 (c) direct the sale of securities in the program at their full and true value when found necessary to raise
24 money for payments due from the treasury funds for which the securities have been purchased.

25 (7) The cost of administering and accounting for each investment fund must be deducted from the
26 income from each fund, other than the fund derived from land granted to the state pursuant to the Morrill Act of
27 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. An appropriation to pay
28 the costs of administering and accounting for the Morrill Act fund is provided for in 77-1-108."

29

30 **Section 3.** Section 17-7-502, MCA, is amended to read:

1 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
2 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the
3 need for a biennial legislative appropriation or budget amendment.

4 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
5 of the following provisions:

6 (a) The law containing the statutory authority must be listed in subsection (3).

7 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
8 appropriation is made as provided in this section.

9 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407;
10 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121;
11 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369;
12 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319;
13 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107;
14 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306;
15 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504;
16 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870;
17 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518;
18 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

19 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
20 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
21 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
22 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
23 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
24 appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of
25 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L.
26 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's
27 unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates
28 July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion
29 of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202,
30 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005,

1 the inclusion of 15-31-906 terminates January 1, 2010.)"

2

3 **Section 4.** Section 77-1-108, MCA, is amended to read:

4 **"77-1-108. Trust land administration account.** (1) There is a trust land administration account in the
5 state special revenue fund. Money in the account is available to the department by appropriation and must be
6 used to pay the costs of administering state trust lands.

7 (2) Appropriations from the account for each fiscal year may not exceed the sum of 1 1/8% of the book
8 value balance in the ~~nine~~ permanent funds administered by the department, other than the fund containing
9 proceeds derived from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308,
10 and the Morrill Act of 1890, 7 U.S.C. 321 through 329, on the first day of January preceding the new biennium
11 and 10% of the revenue deposited in the capitol building land grant trust fund in the last-completed fiscal year
12 prior to the new biennium.

13 (3) ~~Unreserved~~ Except as provided in subsection (4), unreserved funds remaining in the account at the
14 end of a fiscal year must be transferred to each of the permanent funds in proportionate shares to each fund's
15 contribution to the account as calculated in 77-1-109(3).

16 (4) (a) The amount of \$80,000 each biennium is TRANSFERRED FROM THE STATE GENERAL FUND TO AN
17 ACCOUNT IN THE STATE SPECIAL REVENUE FUND. THE ACCOUNT IS statutorily appropriated, as provided in 17-7-502,
18 from the general fund to the department for the purposes of administering the land granted to the state pursuant
19 to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. Any
20 unexpended portion of the statutory appropriation may be retained in the account and used for the administration
21 of the Morrill Act land.

22 (b) At the end of each fiscal year, the department shall pay from the appropriation in subsection (4)(a)
23 to the trust containing proceeds derived from land granted to the state pursuant to the Morrill Act of 1862, 7
24 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, an amount calculated to be the
25 cost of administering the investment of the fund derived from that trust. The payment must be based upon the
26 percentage that the Morrill Act fund constitutes of the total fund derived from all trust lands."

27

28 **Section 5.** Section 77-1-109, MCA, is amended to read:

29 **"77-1-109. Deposits of proceeds in trust land administration account.** (1) (a) The department shall,
30 until the deposit equals the amount appropriated for the fiscal year pursuant to 77-1-108, deposit into the trust

1 land administration account created by 77-1-108 the following:

2 ~~(a)~~(i) mineral royalties;

3 ~~(b)~~(ii) the proceeds or income from the sale of easements and timber, except timber from public school
4 and Montana university system lands;

5 ~~(c)~~(iii) 5% of the interest and income annually credited to the public school fund in accordance with
6 20-9-341; and

7 ~~(d)~~(iv) fees collected pursuant to 77-2-328.

8 (b) The department may not make deductions from interest or income generated from lands granted to
9 the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321
10 through 329.

11 (2) After the deposits in subsection (1) have been made, the remainder of the proceeds, other than
12 proceeds from timber from Montana university system lands and other than those purchased pursuant to
13 17-6-340, must be deposited in the appropriate permanent fund and the capitol building land grant trust fund.
14 Timber proceeds from university system lands must be paid over to the state treasurer, who shall deposit the
15 money to the credit of the proper fund for use as provided in 17-3-1003(1). Royalty payments purchased pursuant
16 to 17-6-340 must be used as provided in that section and 20-9-622.

17 (3) The amount of money that is deposited into the trust land administration account may not exceed
18 1 1/8% of the book value balance in each of the ~~nine~~ permanent funds, other than the fund containing proceeds
19 derived from lands granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the
20 Morrill Act of 1890, 7 U.S.C. 321 through 329, administered by the department on the first day of January
21 preceding the new biennium and 10% of the previous fiscal year revenue deposited into the capitol building land
22 grant trust fund."

23

24 **Section 6.** Section 77-1-602, MCA, is amended to read:

25 **"77-1-602. Definition of terms.** Unless the context requires otherwise, in this part, the following
26 definitions apply:

27 (1) "Account" means the resource development account in the state special revenue fund.

28 (2) (a) "Income" means all proceeds received for the use of state land except:

29 (i) revenue required by law to be placed in the permanent fund type; and

30 (ii) revenue from the sale of timber.

1 (b) For purposes of subsection (2)(a), state land does not include land granted to the state pursuant to
2 the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329."

3
4 **Section 7.** Section 77-1-606, MCA, is amended to read:

5 **"77-1-606. Restriction on use of income from school and institutional lands.** Money in the resource
6 development account created in 77-1-604 that is derived from the income from public school lands, university
7 lands, other than land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the
8 Morrill Act of 1890, 7 U.S.C. 321 through 329, agricultural college lands, scientific school lands, normal school
9 lands, capitol building lands, or institutional lands must be expended by the department solely for the purpose
10 of defraying the costs and expenses necessarily incurred in developing public lands of the same trust. If the board
11 determines that public lands in a trust may be developed and ~~moneys~~ money in the account from that trust ~~are~~
12 is insufficient to defray the necessary costs and expenses incurred, the board may transfer sufficient ~~moneys~~
13 money from other trusts in the account. Trust accounts from which money is transferred must be reimbursed by
14 a method approved by the board."

15
16 **Section 8.** Section 77-1-613, MCA, is amended to read:

17 **"77-1-613. Deduction of portion of income received from sale of timber from state trust lands --**
18 **creation of account.** (1) There is an account in the state special revenue fund called the state timber sale
19 account. Money in the account may be appropriated by the legislature for use by the department in the manner
20 set out in this section to enhance the revenue creditable to the trusts. There must be placed in the account an
21 amount from timber sales on state lands, other than land granted to the state pursuant to the Morrill Act of 1862,
22 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, each fiscal year equal to the
23 amount appropriated from the account for the corresponding fiscal year.

24 (2) Timber sale program funds deducted under subsection (1) must be directly applied to timber sale
25 preparation and documentation.

26 (3) In order to increase the volume of timber sold at the earliest possible time while continuing to meet
27 the requirements of applicable state and federal laws and in order to avoid unnecessary delays and extra costs
28 that would result from increasing its permanent staff, the department may contract for services that will enable
29 achievement of the purposes of this section and that will achieve the highest net return to the trusts.

30 (4) To maximize overall return to the trusts, the timely salvage of timber must be considered. However,

1 salvage timber sales may not adversely affect the implementation of green timber sales programs."

2

3 **SECTION 9. SECTION 77-1-905, MCA, IS AMENDED TO READ:**

4 **"77-1-905. Rental provisions for commercial leasing -- payments and credits -- administration --**
5 **lease options.** (1) The first year's annual rental payment for state trust land leased for commercial purposes must
6 be paid by cashier's check, and payment is due upon execution of the lease. The department may require the
7 lessee of state trust land for commercial purposes to pay the department's cost of the request for proposals
8 process, including publication and other reasonable expenses. Failure to pay the first year's rental at the time of
9 lease execution must result in the cancellation of the lease and forfeiture of all money paid. In the event of
10 cancellation or in the event that the successful proposer is offered and does not accept the lease, the board may
11 enter into negotiations with other persons who submitted a proposal for commercial purposes in response to the
12 department request for proposals on that tract.

13 (2) The board shall specify in any commercial lease an annual rental equal to the full market rental value
14 of the land. The annual rent may not be less than the product of the appraised value of the land multiplied by a
15 rate that is 2 percentage points a year less than the rate of return of the unified investment program administered
16 by the board of investments pursuant to 17-6-201. The rate of return from the unified investment program used
17 in this subsection must be determined no less than 30 days prior to the execution of the competitive bid. A
18 commercial lease may include a rental adjustment formula established by the board that periodically adjusts the
19 annual rent provided for in the lease at frequencies specified in the lease. The board may allow a credit against
20 the annual rent due for payments made by the lessee on behalf of the state of Montana for construction of
21 structures and improvements, special improvement district assessments, annexation fees, or other city or county
22 fees attributable to the state's property interest in land leased for commercial purposes. The board may accept
23 as lawful consideration in-kind payments of services or materials equal to the full market value of the rent
24 calculated to be owed on any commercial lease. A lease issued under this part may include an amortization
25 schedule to be used to determine the value to the lessee of improvements when the lease is terminated.

26 (3) ~~The~~ Except for rent received from lands granted to the state pursuant to the Morrill Act of 1862, 7
27 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, the department may use up to
28 10% of the annual rent received from a commercial lease to contract with realtors, property managers, surveyors,
29 legal counsel, or lease administrators to administer the commercial lease, either singly or in common with other
30 leases, or to provide assistance to the department in the administration of commercial leases.

1 (4) In anticipation of entering into a commercial lease, the board may issue an option to lease at a rental
2 rate that the board determines to be appropriate. An option to lease may not exceed a term of 2 years. An option
3 to lease may not be construed to grant a right of immediate possession or control over the land but may only
4 preserve the optionholder's exclusive right to obtain a commercial lease on the land in the future."
5

6 **Section 10.** Section 77-2-328, MCA, is amended to read:

7 **"77-2-328. Additional rules -- deposit of fees.** The board may prescribe any additional rules for the
8 conduct of sales of state land as in its judgment the interests of the state may demand. The rules may not include
9 a deduction of fees from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308,
10 and the Morrill Act of 1890, 7 U.S.C. 321 through 329. Any fees collected by a rule adopted pursuant to this
11 section must be deposited in the trust land administration account as provided in 77-1-108."
12

13 **Section 11.** Section 77-5-204, MCA, is amended to read:

14 **"77-5-204. Sale of timber -- fee for forest improvement.** (1) The board may sell timber on state lands,
15 at a price per 1,000 board feet, when appropriate, that, in the board's judgment, is in the best interest of the state,
16 provided that live timber is not sold for less than full market value.

17 (2) Timber sold or cut from state lands must be cut and removed under rules that may be prescribed by
18 the board for standing timber preservation and fire prevention. In all cases, the board shall require the person
19 cutting the timber to pile and burn or otherwise dispose of the brush and slash in the manner that may be
20 prescribed by the board.

21 (3) Before the sale of timber is granted, the value of the timber must be appraised under the direction
22 of the department, upon the request and subject to the approval of the board. An appraisal must show as nearly
23 as possible the value per 1,000 board feet, when appropriate, of all merchantable timber.

24 (4) In addition to the price of the timber established under subsection (1), the board may require a timber
25 purchaser to pay a fee for forest improvement unless the timber is to be harvested from land granted to the state
26 pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through
27 329. Revenue from the fee must be deposited in the state special revenue fund to the credit of the department
28 and, as appropriated by the legislature, may be used only for:

- 29 (a) disposing of logging slash;
30 (b) acquiring access and maintaining roads necessary for timber harvesting on state lands;

1 (c) reforesting, thinning, and otherwise improving the condition and income potential of forested state
2 lands; and
3 (d) complying with legal requirements for timber harvesting."
4

5 NEW SECTION. **Section 12. Effective date.** [This act] is effective on passage and approval.

6 - END -